



# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## COUNCIL COMMUNICATION

TO: City Council

FROM: City Manager

MEETING DATE: December 21, 1988

AGENDA TITLE: Approve Renewal of White Slough Lease Agreement with Alfred B. Bechthold, Area Located at 12751 North Thornton Road, and Authorize the City Manager and City Clerk to Execute the Agreement

RECOMMENDED ACTION: That the City Council authorize the City Manager and City Clerk to execute the attached agreement between the City of Lodi and Mr. Alfred B. Bechthold, covering the use of a portion of the City's White Slough Property.

BACKGROUND INFORMATION: At a regular council meeting of August 3, 1983, the City Council directed staff to renegotiate the lease agreement on a portion of the White Slough Property with our present lessee, Mr. Bechthold. During these negotiations an agreement was made that raised the annual fee from \$65.00 per acre/year to **\$82.00** per acre/year for the period January 1, 1984 through December 31, 1988. Additionally, the lessee had agreed to perform at his cost (\$30,000+) major land leveling of all land being rented over this five-year period in return for an additional five-year lease rental option.

On June 13, 1988, Mr. Alfred Bechthold informed the City of his desire to renew the current lease under the five-year renewal option in the existing lease agreement. Mr. Bechthold has land leveled all farmable land, with the exception of a 44-acre parcel, which is now being accomplished.

Under the current lease agreement, Mr. Bechthold is leasing 421 acres. Included in this acreage are two areas that are unfarmable and useless to Mr. Bechthold. One area is a former entrance road from Thornton Road and dead-ending into the east side of I-5. The second area, located on the east side of the freeway on the City's south property line in which two trunk lines (33" Industrial and 48" Domestic Sewers) were constructed at such a shallow depth that the land cannot be cultivated. These two areas, totaling 3 acres, are being excluded from the new lease agreement.

APPROVED:

  
THOMAS A. PETERSON, City Manager

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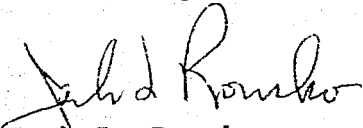
Additionally, the Public Works Department has negotiated the following increasing rental rate with Mr. Bechthold:

<u>YEAR</u>	<u>\$ AC/YR</u>	<u>TOTAL ACRES</u>	<u>ANNUAL RENT</u>
1989	\$ 90	418	\$37,620
1990	\$ 95	418	\$39,710
1992	\$100	418	\$41,800
1992	\$105	418	\$43,890
1993	\$110	418	\$45,980

The total rent under this renegotiated five-year agreement will be \$208,000, up \$35,390 from the prior five-year agreement. It should be pointed out that the use of the land is restricted and regulated by the State Department of Health Services since the land is being irrigated by treated plant effluent.

The City has had an excellent working relationship with Mr. Bechthold for the past 15 years and he is considered an exceptional lessee.

It is felt that the above rental rates are fair and equitable and since Mr. Bechthold has the right to exercise his five-year option, it is therefore recommended that the Council **approve** and authorize the City Manager and City Clerk to execute the attached agreement.

  
Jack L. Ronsko  
Public Works Director

JLR/FF:sc

Attachment

cc: City Attorney  
Water/Wastewater Superintendent  
Mr. Alfred B. Bechthold

L E A S E

THIS LEASE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1988, by and between the CITY OF LODI, a municipal corporation, hereinafter called Lessor, and ALFRED B. BECHTHOLD, hereinafter called Lessee:

W I T N E S S E T H :

I. PROPERTIES: That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by the said Lessee, and the said Lessee does hereby lease, hire, and take from the said Lessor, those certain properties described as follows:

Those certain properties described in Exhibit "A" attached hereto, and by this reference made a part hereof. Property to be leased totals 418 (four hundred eighteen) acres.

2. TERM: The term of this Lease shall be for a period of five (5) years, commencing January 1, 1989 and terminating at midnight on December 31, 1994.

3. RENT: In consideration of said Lease, Lessee

agrees to pay to Lessor as rent for the demised premises,  
the following amounts :

<u>YEAR</u>	<u>\$ AC/YR</u>	<u>TOTAL ACRES</u>	<u>ANNUAL RENT</u>
1989	\$ 90	418	\$37,620
1990	\$ 95	418	\$39,710
1991	\$100	418	\$41,800
1992	\$105	418	\$43,890
1993	\$110	418	\$45,980

4. OPTION TO RENEW LEASE: Provided Lessee has complied with all of the terms and conditions of this Lease on his part to be performed, Lessor hereby grants to Lessee an exclusive option to renew this Lease, subject to the same uses and conditions for the additional term of five (5) years and joint agreement on a renegotiated rental price, Lessee must notify Lessor, in writing, of his intention to exercise this successive five-year option at least six (6) months prior to the expiration of any term.

In the event Lessee fails to exercise his option to renew this lease for the period January 1, 1995, to December 31, 1999, the Lessee shall, on or before December 31, 1994, furnish to Lessor a Quitclaim Deed to the properties leased.

5. USE: The properties shall be used solely for the purpose of pasturing cattle or growing, cultivating, fertilizing, irrigating, and harvesting of agricultural crops. During the term of this Lease, and any extension

thereof, it is understood and agreed by the parties hereto that Lessee shall be required to accept all industrial wastewater and all domestic sludges (approximately Three Hundred Million [300,000,000] gallons and Two Thousand [2,000] dry tons of sludge per year respectively) from City's White Slough Water Pollution Control Facilities. Lessor will also make available all excess domestic effluent, at no cost to the Lessee,

It is further understood and agreed by Lessee that Lessee must comply with all present and future laws, ordinances, rules, and regulations promulgated by any Governmental authority of competent jurisdiction regulating the type of crops that can be grown on the properties during the lease term and any extension thereof. Lessee accepts the properties with the full understanding that the California Department of Health Services regulations (Title 22, Division 4) will limit Lessee to growing only fodder, fibre, or seed crops once wastewater and/or sludges are discharged on the properties. Further, lessee shall be permitted to use the properties for any use consistent with the terms of the within Lease and those uses permitted by all governmental authorities, including, but not limited to, the California Department of Health Services. Further, Lessee agrees to manage the irrigation of the property with industrial wastewater, sludges and treated effluent from the white Slough facility in such a manner that it will not allow the discharge of any runoff to White Slough or

adjacent private or public property, and meet all regulations imposed by all governmental authorities having proper jurisdiction, including, but not limited to, the Central Valley Regional Water Quality Control Board. Lessee shall use and occupy said premises in a quiet, lawful, and orderly manner. Lessor and Lessee further agree that they shall permit no hunting, fishing, or public access to any part of the properties, including Lessee.

6. REMEDIES ON DEFAULT: Should Lessee fail to pay any part of the rents herein specified at the times, or in the manner herein provided, or fail to comply with or perform any other of the terms and provisions of this Lease on the part of Lessee to be performed or complied with, then, and in that event, Lessor may exercise any and all remedies provided by law or equity by reason of such default, including the right, at Lessor's option, of terminating this Lease. In any of such events, Lessor shall be entitled to the immediate possession of said leased premises, and, at its option, may enter into, and upon, said premises, without notice to Lessee, and exclude Lessee and all persons and all property therefrom, and by process of law, or otherwise, take and resume possession of said premises. Each and all of Lessor's remedies shall be construed as cumulative, and no one of them as exclusive of the other, or as exclusive of any remedy provided by law or equity.

7. **RELATIONSHIP OF PARTIES:** It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of Lessor. Lessee, or his sub-tenant, shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers.

8. **DITCH, ROAD, AND PROPERTY MAINTENANCE:** Lessee shall maintain and pay all costs of maintaining the irrigation lines, ditches, fences, and all access roads located on the properties. Lessee, at his sole cost and expense, shall provide an adequate drainage system and agrees to cause to be cleaned within a reasonable time, when requested by Lessor to do so, the drainage Citches located on the properties. Lessee shall further be responsible, at his sole cost and expense, for maintaining and repairing all improvements located on the properties, including, but not limited to, all buildings, canals, corrals, and other improvements of any nature whatsoever located on the demised premises.

9. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign, encumber, convey, or otherwise hypothecate this Lease, in whole or any part, without first obtaining the written consent of Lessor. Lessee shall be permitted to sublet the properties to a responsible person, firm, or corporation, but any such subletting or use by another person, firm, or corporation shall in no way release Lessee from the obligation, conditions, and terms of this Lease.

Lessee shall furnish in writing to Lessor the name of any sub-tenant, and any sublease entered into by Lessee shall incorporate the terms, provisions, and conditions of this Lease.

10. ENTRY BY LESSOR: Lessor shall have the right at all reasonable times during the term of this Lease to enter the said leased premises for the purpose of examining or inspecting the same.

11. REPAIRS: Lessee shall be solely responsible for all repairs to the properties. Lessee shall notify Lessor, in writing, of any alterations, or additions, to the leased premises, and major alterations, or any alteration that would interfere with Lessor's wastewater discharges on the leased premises shall be first approved by Lessor before the same is made. All alterations, additions, and improvements made in, to, or on the demised premises, shall, immediately upon the installation thereof, become, and be, the property of the Lessor, and shall remain upon, and be surrendered with, the premises.

12. SURRENDER OF PREMISES: Lessee shall, at the termination of the term hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair, reasonable wear and tear and acts of God or fire excepted.

13. FEES: Lessee shall pay all license fees, or other fees or taxes, levied by any governmental agency which



may be imposed upon the business of Lessee or his sub-tenant conducted upon the premises.

If any of the above charges are assessed against the real property, and because of said assessment, the Lessor pays the same, which Lessor will have the right to do regardless of the validity of any such levy, the Lessee, upon demand, will repay to the Lessor all taxes and other assessments so levied against the Lessor which are due by the Lessee.

14. UTILITIES: Lessee agrees to pay during the term hereof, all utilities of any nature whatsoever used upon said leased premises except for the run-off collection system located on the property.

15. WASTE: Lessee shall not maintain or commit, nor suffer to be maintained or committed, any nuisance or waste in or about said leased premises, nor do or permit anything to be done in or about said premises, nor keep anything therein, which will in any way conflict with any law, ordinance, rule, or regulation affecting the occupancy and use of said premises, which have been, or may hereafter be, enacted or promulgated by any public authority.

16. MECHANIC'S LIEN: Lessee agrees to keep said premises free from all liens and claims of mechanics, laborers, materialmen, and others for work done, and material furnished, and Lessee shall not create, or suffer to be created, any lien or encumbrance on said premises.

17. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

Lessee agrees to indemnify and save harmless Lessor, from and against all claims of whatever nature, arising from any act, omission, or negligence of Lessee or Lessee's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee, or Lessee's agents or employees, This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Lessee agrees to maintain in full force during the term hereof a policy of public liability insurance under which Lessee is named as insured, and containing an Additional Named Insured Endorsement naming Lessor as an additional insured, and under which the insurer agrees to indemnify and hold Lessee and Lessor harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the

part of Lessee, or Lessee's agents or employees. The minimum limits of such insurance shall be \$500,000.00/\$1,000,000.00 (Five Hundred Thousand Dollars/One Million Dollars). In addition to the Additional Named Insured Endorsement on Lessor's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the co-insurance afforded by this endorsement."

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Lessor within 10 (ten) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Lease, shall apply and be construed as applying to any subtenant of Lessee.

18. BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY: If Lessee should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of his assets or of this leasehold, and such bankruptcy,

insolvency, or receivership proceeding shall not be dismissed within 90 (ninety) days, then Lessor may, without notice or demand, terminate this Lease and forthwith re-enter and repossess the properties, and remove all persons therefrom, and under no circumstances, shall this Lease be assignable or transferable by operation of law.

19. EMINENT DOMAIN: If the whole or any portion of the premises hereby leased shall be taken by any public authority under the power of eminent domain, whether by negotiation or otherwise, then the term of this Lease shall cease as of the date possession is taken by such authority as to that portion taken, and the rental thereafter due or payable shall be reduced for the portion taken at the rental rate per acre then in effect. All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the leased premises, shall be the property of Lessor. Provided, however, that Lessor shall not be entitled to any award made to Lessee for loss of business, business leasehold improvements and crops.

20. ATTORNEY'S FEES: In each suit brought for the recover of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach, of any of the terms, condition, or covenants of this Lease, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the

Court in such suit and added to, and become a part of the judgment therein.

21. **WAIVER:** Failure of Lessor to insist upon performance of any of the terms or conditions of this Lease in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Lessor of rent, the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.

22. **ACCEPTANCE OF LEASEHOLD ESTATE:** Lessee has examined the leased premises; knows the conditions thereof; and accepts possession thereof in their condition.

23. **TERMINATION OF LEASE:**

A. By Lessee-

Lessee shall be permitted to terminate this Lease at his option in the event governmental laws, rules, ~~or~~ regulations, including, but not limited to those promulgated by the California Department of Health Services, prohibit the growing of any crop on the properties. In the event Lessee terminates this Lease as provided above, rent shall be pro-rated to date of termination.

~~Lessee shall also be permitted to terminate this~~  
Lease for any reason whatever if written notice is given to Lessor six (6) months prior to the end of

any individual year covered under this lease. Lessee shall be responsible for all rents due for the entire calendar year in which such notice is given.

B. By Lessor.

Lessor may terminate this lease if it determines, in its sole discretion, that the demised premises are necessary for the expansion or modification of the White Slough Water Pollution Control Facility. In such cases, the Lessor shall give to the Lessee six (6) months written notice thereof, and rent shall be prorated for the year.

24. **CONTRACT:** This written agreement constitutes the entire contract between the Lessee and Lessor, and no representation or agreement, unless expressed herein, shall be binding on the Lessor or Lessee,

25. **ACCESS:** Lessee shall be permitted reasonable access over adjacent City property owned by Lessor for ingress and egress purposes.

26. **BINDING ON HEIRS:** This Lease shall include and inure to, and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto, but nothing in this paragraph contained shall be construed to modify or impair in any manner any of the provisions and restrictions of this Lease relating to the assignment of this Lease, or of any interest therein, or to the subletting

or underletting of said leased premises or any part thereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed  
this Lease on the date and year first above written.

CITY OF LODI, a municipal corporation  
Hereinabove called "Lessor"

By \_\_\_\_\_  
THOMAS A. PETERSON  
City Manager

Attest:

\_\_\_\_\_  
ALICE M. REIMCHE  
City Clerk

ALFRED B. BECHTHOLD  
Hereinabove called "Lessee"

\_\_\_\_\_  
ALFRED B. BECHTHOLD

Approval as to form:

\_\_\_\_\_  
BOB MCNATT  
City Attorney

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